



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Introduced:	02/24/06	Bill No:	AB 2873
Tax:	Bradley-Burns	Author:	Wolk
Related Bills:	SB 1020 (Migden)		

BILL SUMMARY

This bill would authorize a county or a city and county to impose an additional 0.25 percent local sales and use tax for local transportation purposes.

ANALYSIS

Current Law

Under **Article XIII A, Section 4, of the California Constitution**, cities, counties, and special districts, by a two-thirds vote of the voters of such districts, may impose special taxes, except ad valorem taxes on real property or a transactions tax or sales tax on the sale of real property within such districts.

Under **Article XIII C, Section 1, of the California Constitution**, "General tax" means any tax imposed for general governmental purposes. "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund. Under Section 2 of Article XIII C, a local government may impose a general tax by a majority of the voters, and impose a special tax by two-thirds of the voters. Also under Section 2 of Article XIII C, special purpose districts or agencies, including school districts, have no power to levy general taxes.

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (commencing with Section 7200 of the Revenue and Taxation Code (RTC)), authorizes cities and counties to impose a local sales and use tax. The rate of tax is fixed at 1 percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. Beginning on July 1, 2004, and continuing through the "revenue exchange period" (also known as the "Triple Flip"), RTC section 7203.1 temporarily suspends the authority of a county or a city to impose a tax under RTC sections 7202 and 7203, and instead provides that the applicable rate is the following: 1) in the case of a county, 1 percent; and 2) in the case of a city, 0.75 percent or less. "Revenue exchange period" means the period on or after July 1, 2004, and continuing until the Department of Finance notifies the Board, pursuant to Section 99006 of the Government Code, that the \$15 billion Economic Recovery Bonds have been repaid or that there is sufficient revenues to satisfy the state's bond obligations.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position

Under the Bradley-Burns Law, counties are authorized to impose a local sales and use tax at a rate of up to 1 percent. Cities are also authorized to impose a local sales and use tax at a rate of up to 0.75 percent that is credited against the county rate so that the combined local sales and use tax rate under the Bradley-Burns Law does not exceed 1 percent. Of the 1 percent, cities and counties use the 0.75 percent to support general operations. The remaining 0.25 percent is designated by statute for county transportation purposes and may be used only for road maintenance or the operation of transit systems. The counties receive the 0.25 percent tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county.

Also, under Bradley-Burns Law, counties are required to comply with the provisions of Article 11 (commencing with Section 29530) of Chapter 2 of Division 3 of Title 3 of the Government Code. Under Section 29530 of the Government Code, all revenues derived from that portion of the Bradley-Burns rate in excess of 0.75 percent are required to be deposited in a local transportation fund in the county treasury and dedicated for county transportation purposes.

The following table provides the components of the state and local sales and use tax rate:

Rate	Jurisdiction	Purpose/Authority
4.75 %	State (General Fund)	Dedicated for state general purposes (Sections 6051 and 6201 of the RTC)
0.25 %	State (General Fund)	Dedicated for state general purposes (Sections 6051.3 and 6201.3 of the RTC)
0.25 %	State (Fiscal Recovery Fund)	Dedicated to the repayment of the Economic Recovery Bonds (Sections 6051.5 and 6201.5 of the RTC)
0.50 %	State (Local Revenue Fund)	Dedicated to local governments to fund health and welfare programs (Sections 6051.2 and 6201.2 of the RTC)
0.50 %	State (Local Public Safety Fund)	Dedicated to local governments to fund public safety services (Section 35 of Article XIII of the California Constitution)
1.00 %	Local (City/County) 0.75% City and County 0.25% County	Dedicated to city and county general operations; Dedicated to county transportation purposes (Section 7203.1 of the RTC, operative 7/1/04)
7.25 %	Total State and Local Sales and Use Tax Rate	

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax.

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Proposed Law

This bill would add Section 7203.25 to the Bradley-Burns Uniform Local Sales and Use Tax Law to, on or after January 1, 2006, authorize a county or a city and county, subject to the applicable voter-approval requirements, to impose an additional 0.25 percent local sales and use tax. The local sales and use tax imposed under this section is for the purposes specified under Section 29530 of the Government Code.

This bill would also amend Section 29530 of the Government Code to provide that the board of supervisors of a county or city and county that imposes a tax pursuant to Section 7203.25 of the Bradley-Burns Law, would contract with the Board to establish a local transportation fund in the county or city and county treasury, and would deposit in the fund all revenues derived from the tax imposed under Section 7203.25, less the Board's administrative costs.

History

In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with the different sales and use tax rates among the various communities in the state. Initially, it was optional for counties to participate in the Bradley-Burns tax program, and the local sales and use tax rate was fixed at 1 percent. The difference now is that the cities and counties cannot impose their own local sales tax program separate from Bradley-Burns.

In 1956, the board of supervisors of seven counties (Inyo, Los Angeles, Mariposa, Mono, Orange, Sacramento, San Benito) adopted ordinances effective April 1, 1956. Subsequently, 50 other county boards adopted ordinances by June 1959, and the final county (Siskiyou) board, adopted their ordinance in December 1961. None of these ordinances had been approved by the voters of the respective jurisdiction.

In 1971, Senate Bill 325 (Ch. 1400, Mills) enacted the Transportation Development Act and authorized counties to impose an additional 0.25 percent local sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law. The 0.25 percent local tax is dedicated for county transportation purposes.

In 1978, voters approved Proposition 13, which lowered property taxes and placed other restrictions on local government taxation. Specifically, Proposition 13 included a section stating that "Cities, Counties, and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district . . ." In 1986, voters approved a statutory measure known as Proposition 62, which prohibited a local government from imposing (1) a tax for specific purposes unless it is approved by two-thirds of the voters, and (2) a tax for general purposes unless it is approved by a majority of the voters.

In 1996, voters approved Proposition 218, which added Articles XIIC and XIID to the California Constitution and requires, among other things, that (1) any tax imposed for general governmental purposes must be approved by a majority of the voters (including taxes imposed by chartered cities); (2) any tax imposed for specific purposes must be approved by two-thirds of the voters; (3) any tax imposed for a specific purpose is a "special tax," even if the funds are placed into a general fund; and (4) special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

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On December 12, 2003, Governor Schwarzenegger signed Assembly Bill 9 (Ch. 2 of the Fifth Extraordinary Session, Oropeza), known as the "Triple Flip," and which voters approved through Proposition 57 in March 2004, which enacted the Economic Recovery Bond Act and authorized the issuance of up to \$15 billion of bonds to finance the accumulated budget deficit. Operative July 1, 2004, AB 9 increased the state tax rate by 0.25 percent but decreased the local tax rate by 0.25 percent (cities and counties would be reimbursed for their local tax revenue losses through property tax revenues). The revenues from the 0.25 percent state sales and use tax increase are deposited in the Fiscal Recovery Fund and dedicated to the repayment of the deficit-financing bonds.

More recently, voters approved Proposition 1A (Resolution Ch. 133, Senate Constitutional Amendment 4, Torlakson), a constitutional amendment, placed on the November 2004 General Election ballot by the Legislature as part of the 2004-05 budget agreement. Under Proposition 1A, the Legislature is prohibited from enacting a statute that would, among other things, do the following: 1) reduce any tax rates imposed under Bradley-Burns Uniform Local Sales and Use Tax Law or Transactions and Use Tax Law, as those laws read on November 3, 2004; 2) change the method of allocating local sales tax revenues under the Bradley-Burns Uniform Sales and Use Tax Law or the Transactions and Use Tax Law, as those laws read on November 3, 2004; and 3) extend the period of the Triple Flip or reduce the property tax payments to cities and counties required under the Triple Flip. The Legislature may, however, revise the allocation method of the use tax portion of the Bradley-Burns tax if necessary to allow the state to participate in an interstate compact or to comply with federal law.

Background

Two bills have been introduced in the last two years that would have authorized counties, subject to voter approval, to increase the 0.25 percent Bradley-Burns local sales and use tax for county transportation purposes:

AB 1065 (Longville), introduced during the 2003-04 session, would have authorized a county to impose a local sales and use tax at a rate of either 1.25 or 1.50 percent. The bill failed passage in Senate Revenue and Taxation Committee.

SB 1020 (Migden), introduced in 2005, is identical to this bill. This bill was heard in the Senate Revenue and Taxation Committee, but no further action was taken on the bill.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the California Transit Association in an effort to increase revenues for county transit services. According to the sponsor, the tax revenues collected by the Board in excess of 0.75 percent (Transportation Development Act) have proven to be the backbone of transit funding in California and contribute to vital road maintenance and rehabilitation in rural areas. However, the current 0.25 percent local tax portion dedicated for county transportation purposes has not been increased since its inception. Consequently, the value of the revenues derived from this 0.25 percent tax portion has eroded precipitously over time. According to the sponsor, this bill will provide counties another possible tool to address the long decline in the local transportation buying power.

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2. The Bradley-Burns system is a uniform system; the same rate applies to all 58 counties. What if all 58 counties did not get the required voter approval?

This bill would authorize all 58 counties, subject to voter approval, to impose an additional 0.25 percent Bradley-Burns local tax in their jurisdictions. It is unlikely that: 1) all counties would even attempt to put a measure on the ballot; and 2) all counties would get the required voter approval. In this regard, it appears that the tax authorization approach provided for in this bill would defeat the whole purpose of a uniform tax system.

As explained previously, the Bradley-Burns Uniform Law was enacted in 1955 to put an end to the varying tax rates levied by local jurisdictions throughout the state. Prior to the enactment of Bradley-Burns, retailers were faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, retailers were affected competitively. Many retailers advertised "no sales tax if you buy in this area." With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected. Not all counties and cities, however, came on board at once. The last entities to enact Bradley-Burns ordinances did so in 1961. Litigation over the interface between jurisdictions in the system and those outside of it resulted in the published cases *City of Pomona v. SBE* (1959) 52 Cal.2d 305 and *City of Commerce v. SBE* (1962) 205 Cal.App.2d 387. With the differing tax rates that could occur from the enactment of this bill, such litigation would likely erupt again, thus draining state resources from program administration into litigation. Also, the problems retailers encountered before the enactment of Bradley-Burns would more than likely return.

3. Why put an end to the uniformity of Bradley-Burns when counties, under the Transactions and Use Tax Law, can impose a tax, subject to voter approval, for transportation purposes. As stated under Comment 2, Bradley-Burns is a uniform system for which the same rules apply to all local jurisdictions. The Transactions and Use Tax Law is not uniform. Under that law, counties have blanket authority to impose a general tax (majority vote) or a special tax (two-thirds vote). Since the sponsor agrees that in order to impose an additional local sales and use tax, voter approval is required, why not let the counties place a measure on the ballot to impose a transactions and use tax for the transportation purposes provided for in this bill?

SB 566 (Ch. 709, Stats. 2003, Scott) increased the maximum combined rate of transactions and use taxes imposed in any county from 1.50 to 2 percent. Currently, the combined rate of transactions and use taxes imposed throughout a county ranges from 0.125 percent to 1.50 percent. Currently, of the 58 counties, there are 24 counties that do not impose a transactions and use tax. Additionally, of the 2 percent cap, all 58 counties have at least 0.50 percent left. The current maximum combined state, local and transactions and use tax rate is 9.25 percent. If this bill was enacted, the maximum combined state, local and transactions and use tax rate would be 9.50 percent.

4. Approval by the voters of the local jurisdictions would be required. This bill provides that the tax is subject to the applicable voter-approval requirements of Section 2 of Article XIII C of the California Constitution, as added by Proposition 218.

As passed by the voters in November 1996, Proposition 218 requires voter approval

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in order to raise a new tax, as this measure would require. Proposition 218 also clarified the distinction between general and special taxes based on whether or not the revenue is earmarked for a specific purpose. All general (non-earmarked) taxes must be approved by a majority vote of the local electorate. All special (earmarked) taxes must be approved by a two-thirds vote of the local electorate.

5. **All counties would be required to adopt a new ordinance.** Current law imposes a local tax at a rate of 1 percent in a county. This bill would require every county that adopts the tax to adopt new ordinances reflecting the new rate of 0.25 percent for counties.
6. **Operative date of bill.** The Board would need a 12-month lead time to implement the bill. This bill would require extensive programming to identify and separately track the new 0.25 percent tax. The Board currently has several projects with implementation dates in 2007. One such project is an agency-wide project consisting of eight large subprojects, which includes the U.S. Customs Program for the collection of use tax and the Credit Card Payment program for payment of taxes. This project has not only been funded, but contractors have been hired to assist in the implementation. The project began June 15, 2006, and has a 13-month implementation date. In addition, the Board's E-Services project is in its second phase with implementation dates for certain subprojects throughout 2007.

For these reasons, the language should specify that the provisions of the bill would go into effect on the first day of the first calendar quarter commencing at least twelve months following the bill's effective date.

7. **Operative date of ordinance.** As counties come on board, the Board would need time to notify affected retailers, modify local tax returns, develop instructions for Board staff and affected retailers, and perform minor programming changes. The Board would need at least one quarter lead time, from the date the ordinance is approved by the voters to prepare to administer the sales and use tax ordinance. Section 7265 of the Transactions and Use Tax Law provides that an ordinance shall become operative on the first day of a calendar quarter commencing more than 110 days after the adoption of the ordinance. Board staff will work with the author's office to draft amendments to address this issue.
8. **Technical amendment - partial local sales and use tax exemption for aircraft common carriers.** This bill would authorize a county or city and county, subject to voter approval, to impose an additional 0.25 percent local sales and use tax for transportation purposes. Under current law, there is a partial exemption of 75 percent on sales and purchases of property (i.e. parts, supplies, and equipment) to aircraft operators if: (1) the aircraft is operated by a common carrier according to the laws of California, the United States, or a foreign government; (2) the property is used or consumed directly and exclusively in the use of the aircraft as a common carrier of persons or property; and (3) the property is used or consumed principally outside the county in which the sale was made. **This exemption does not apply to the sale or purchase of fuel and petroleum products.**

As stated above, the sales and purchases of property to aircraft common carriers is exempt from the 0.75 percent local tax. Under Bradley-Burns, counties are authorized to impose a local sales and use tax at a rate of 1 percent. The partial exemption of 75 percent is calculated based on the 0.75 percent of the 1 percent

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county local tax. Therefore, since this bill would authorize a county or city and county, subject to voter approval, to increase the local sales and use tax rate by 0.25 percent, to 1.25 percent, a corresponding reduction needs to be made to the exemption. The partial aircraft common carrier exemption needs to be amended to reflect a partial exemption amount of 60 percent ($0.75 / 1.25$). Without this reduction, the exemption will be overstated resulting in an understated amount of local sales and use tax paid to the counties. Board staff is willing to work with the author's office to draft these amendments.

- 9. This bill does not include a provision for the Board's one-time programming costs and preparatory costs.** This bill provides that the Board shall charge those counties that adopt the new 0.25 percent tax for its costs to administer the sales and use tax ordinance. Would the administrative costs include the Board's one-time programming costs of \$1.7 million or the Board's preparatory costs? Board staff opines that it would not include these costs.

Under Bradley-Burns Uniform Local Sales and Use Tax Law (Bradley-Burns Law) and Transactions and Use Tax Law, preparatory costs are distinguished from administrative costs. Preparatory costs are those costs to actually prepare to administer the ordinance and are a one-time cost incurred after the ordinance has been approved by the voters. Administrative costs are those ongoing costs to administer and maintain the ordinance. The Board has separate contracts—one contract to prepare to administer and operate the ordinance and a second contract for the ongoing administration of the ordinance.

Before the Board can even begin to prepare to administer a county's ordinance, extensive modifications must be made to the Board's computer system to identify and track the new 0.25 percent county tax. This programming is necessary for the administration of any county's ordinance, and the costs are the same regardless if one county or all 58 counties adopt an ordinance to impose the new 0.25 percent tax.

In addition, as counties adopt a sales and use tax ordinance, the Board will have preparatory costs related to the operation of the ordinance (aside from the one-time programming costs mentioned above). These preparatory costs include, notifying all affected retailers, modifying the local tax returns (paper and electronic returns) and instructions, developing instructions for Board staff and affected retailers, revising publications, and programming.

Section 7272 of the Transactions and Use Tax Law requires the Board to bill local jurisdictions for its preparatory costs. The maximum amount of all preparatory costs cannot exceed \$175,000. There were 17 local jurisdictions whose ordinances became effective April 1, 2005. The Board's preparatory costs to prepare to administer and operate these ordinances ranged from \$5,000 to \$35,000.

Board staff will work with the Committee consultants and author's office to draft amendments to address the Board's one-time programming costs and preparatory costs.

- 10. Administrative and technical amendments.** The bill has several technical issues that would need to be addressed before the bill becomes law. Staff will work with

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the author's office to address these issues as the bill progresses through the legislative process.

COST ESTIMATE

The bill provides that the Board shall charge those counties that adopt the new 0.25 percent tax for its costs to administer the sales and use tax ordinance. The Board anticipates these costs to range from \$120,000 to \$1.5 million depending on the size of the county.

The bill does not provide a provision for the Board's one-time programming costs and preparatory costs (see comment 9). The Board would incur one-time programming costs to make extensive modifications to the Board's computer system to identify and track the new 0.25 county tax. The Board anticipates one-time programming costs of an order of magnitude from \$1.5 to \$2 million. The Board will also incur preparatory costs when a county adopts an ordinance. The Board's preparatory costs are associated with the workload to notify all affected retailers, modify the local tax returns (paper and electronic) and instructions, develop instructions for Board staff and retailers, revise publications, and additional minor programming. A detailed cost estimate is pending.

REVENUE ESTIMATE

Taxable sales in California for 2006-07 are estimated to be \$565.1 billion. A tax rate of 0.25 percent would raise \$1.4 billion.

If all counties elected to increase their tax rate by 0.25 percent, the annual revenue gain would be \$1.4 billion.

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